

Supreme Court Review

Tenth Circuit Judicial Conference

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I. Criminal cases

A. Fourth Amendment

Georgia v. Randolph, 126 S.Ct. 1515 (2006). The occupant of a dwelling may not give the police consent to search the common areas of the premises if the other occupant is present at the front door and objects to the search.

Hudson v. Michigan, 126 S.Ct. 2159 (2006). The exclusionary rule does not apply when police violate the requirements for “knocking and announcing” and waiting a reasonable time before entering.

B. Sixth Amendment – Confrontation Clause

Davis v. Washington, 126 S.Ct. 2266 (2006). Statements made during the course of an interrogation (live or during a 911 telephone call) are “non-testimonial” and therefore not subject to Sixth Amendment Confrontation Clause requirements set forth in *Crawford v. Washington*, 541 U.S. 36 (2004) (cross-examination and unavailability requirements) when objective circumstances show that the purpose of the interrogation was to handle an ongoing emergency; such statements are “testimonial” and subject to *Crawford* requirements if no ongoing emergency existed and the primary purpose of the interrogation was to establish or prove past events potentially relevant to later criminal prosecution.

C. Sixth Amendment – right to counsel

United States v. Gonzalez-Lopez, 126 S. Ct. 2557 (2006). The Sixth Amendment guarantee of a criminal defendant’s right to “have the assistance of Counsel for his defense” includes the right to counsel of one’s choice. After trial judge improperly denied a *pro hac vice* motion for admission of qualified attorney whom defendant

had hired (as the government conceded), defendant was not required to demonstrate prejudice in order to establish a Sixth Amendment violation. Further, this type of Sixth Amendment violation is a structural error and thus not subject to harmless error analysis.

D. Habeas corpus

House v. Bell, 126 S.Ct. 2064 (2006). Under actual innocence exception to procedural bar rule, habeas petitioners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt. This was met in this case based on DNA evidence, questions about the reliability of evidence, and new evidence.

Day v. McDonough, 126 S.Ct. 1675 (2006). A district court has the authority to dismiss sua sponte an untimely petition despite the state's erroneous concession of timeliness, but this is not jurisdictional and courts are not required to do so.

II. First Amendment

A. Speech

Rumsfeld v. Forum for Academic and Institutional Rights, 126 S.Ct. 1297 (2006). The Solomon Amendment, 10 U.S.C. §1983(b), which requires law schools to allow military recruiters equal access to campus facilities or have their universities face loss of all federal funds, does not violate the First Amendment.

Garcetti v. Ceballos, 126 S.Ct. 1951 (2006). When public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

Beard v. Banks, 126 S.Ct. 2572 (2006). A prison regulation preventing some prisoners from having access to newspapers, magazines, or photographs does not violate the First Amendment.

Randall v. Sorrell, 126 S.Ct. 2479 (2006). A Vermont state law limiting campaign expenditures and contributions violates the First Amendment right to free speech and free association.

B. Religion

Gonzales v. O Centro Espirata Benificiente Unido do Vegetal, 126 S.Ct. 1211 (2006). Under the Religious Freedom Restoration Act, government lacks a compelling interest in preventing a small religion from using an hallucinogenic controlled substance.

III. Federalism and sovereign immunity

A. Congressional power

Rapanos v. United States, 126 S.Ct. 2208 (2006). The Clean Water Act extend to nonnavigable waters if there is a “significant nexus” to navigable waters.

B. Sovereign immunity

United States v. Georgia, 126 S.Ct. 877 (2006). State governments may be sued pursuant to Title II of the Americans with Disabilities Act, 42 U.S.C. §12131, which prohibits state and local governments from discriminating against people with disabilities in government programs, services, and activities, for violating constitutional right of prisoner to be free from cruel and unusual punishment.

Central Virginia Community College v. Katz, 126 S.Ct. 990 (2006). Sovereign immunity does not apply in Bankruptcy Court proceedings. Congress may constitutionally authorize suits against state governments in Bankruptcy Court proceedings.

IV. Fundamental rights

A. Abortion rights

Ayotte v. Planned Parenthood, 126 S.Ct. 961 (2006). Case remanded for consideration of possible narrowing interpretation of a statute requiring parental notification for abortion for unmarried minors facially unconstitutional that does not have an exception for the health of the girl.

B. Voting rights

League of United Latin American Citizens v. Perry, 126 S.Ct. 2594 (2006). Partisan gerrymandering cannot be constitutionally challenged in the federal courts. Mid-decade redistricting does not violate the Constitution.

V. Statutory rights

Burlington Northern & Sante Fy. Ry. v. White, 126 S.Ct. 2405 (2006). Retaliation, under Title VII, requires showing that the employer took an action that would cause a reasonable employee to refrain from filing a complaint. There must be an adverse employment action, but it need not be a firing or a demotion or a reduction in pay. Application of Title VII retaliation provision is not limited to employer's employment-related or workplace actions.

VI. Civil liberties and the war on terrorism

Hamdan v. Rumsfeld, 126 S.Ct. 2479 (2006). The Detainee Treatment Act does not apply to those who were at Guantanamo at the time it was enacted. The military tribunals created by presidential executive order violate the Uniform Code of Military Justice and common article three of the Geneva Accords.